



October 21, 2009

## ITEIP Early Intervention Practice Guide

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***Practice Guide Topic: Identifying the “Parent” for Infants and Toddlers in Foster Care (20 U.S.C. §§1401(23) and 1439(a)(5))***

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### ***Background***

Infants and toddlers in foster care are those who are in the custody of the Children’s Administration of the Department of Social and Health Services through shelter care, dependency, or other proceedings to protect abused and neglected children.<sup>i</sup>

Studies have found that roughly half of infants and toddlers in foster care have developmental problems, compared with only 5% to 10% of the general pediatric population.<sup>ii</sup> Despite the high prevalence of developmental problems, caregivers and caseworkers often fail to recognize these problems, and infants and toddlers in foster care frequently do not receive the services they need. Nonetheless, a national longitudinal study found that 7% of children receiving early intervention services were in foster care.<sup>iii</sup> Foster care status for some children may be directly related to their delay or disability, due to factors such as prenatal maternal drug use. The prevalence of disabilities among children in foster care highlights the importance of coordination between the child welfare system and ITEIP.<sup>iv</sup>

IDEA Part C contains provisions designed to encourage such coordination and ensure qualifying infants and toddlers in foster care receive early intervention services. First, IDEA requires states to refer any child under age three who is involved in a substantiated case of child abuse or neglect for early intervention services.<sup>v</sup> Second, Part C requires the statewide early intervention system to include a comprehensive child find system,<sup>vi</sup> which must ensure eligible infants and toddlers who are wards of the State are identified, evaluated, and served.<sup>vii</sup> Finally, ITEIP procedural safeguards must include procedures to protect the rights of infants and toddlers who are wards of the State.<sup>viii</sup>

### ***Can foster parents consent for eligibility evaluations and services and sign IFSPs for infants and toddlers in their care?***

In many cases, foster parents can consent for eligibility evaluations and services and sign IFSPs for infants and toddlers in their care. However, foster parents are not always the appropriate or legal decision-makers. Biological parents often retain the rights of parents and the authority to consent for ITEIP evaluations and services, even when the child is living in a foster home or a group setting. Most children who have been removed from home ultimately will return to their



parents' custody. Therefore, it is important for ITEIP Local Lead Agencies and providers to respect the ongoing role of the biological or adoptive parent of a child in foster care.

***Who should consent for eligibility evaluations and services and sign IFSPs for infants and toddlers who are in the custody of the Children's Administration?***

Determining who has the authority to consent for early intervention evaluations and services for children in foster care can be very complex. One study found that even most caseworkers and supervisors do not know who is primarily responsible for identifying developmental needs and ensuring appropriate services.<sup>ix</sup> However, federal and state laws and regulations provide a process to guide the determination.

To determine who has the authority to consent for early intervention evaluations and services for a child in the custody of the Children's Administration, the Family Resources Coordinator or other appropriate ITEIP staff should adhere to the following steps and use the attached flow chart.<sup>x</sup>

***Step 1. Is a biological or adoptive parent "attempting to act" as the parent in the ITEIP process?***

Many children in the custody of the Children's Administration remain home with their parents. The agency provides services to preserve and strengthen the family, while monitoring the children's safety. In addition, a biological or adoptive parent may be active in the ITEIP process even when the child is living in a foster home or a group setting. "Attempting to act" is a phrase from IDEA, which means the parent has shown interest in the ITEIP process. For example, the parent may be seeking evaluations or participating in IFSP meetings or services.

- If no biological or adoptive parent is attempting to act as the parent in the ITEIP process, proceed to **STEP 3**.
- If a biological or adoptive parent is attempting to act, proceed to **STEP 2**.

***Step 2. Has a judge limited the rights or authority of the biological or adoptive parent to make education, medical, or other decisions related to early intervention?***

Sometimes, a juvenile court judge will limit a parent's rights to make education, medical, or other decisions for a child. In serious cases, a parent can lose all his or her parental rights. These actions must be taken via a court order or decree. The child's caseworker and Guardian ad litem will know if parents' rights have been limited and should be able to provide a copy of the court order.



- If the biological or adoptive parent's rights have not been limited, **that parent is the ITEIP parent**, with the authority to consent for evaluations and services, sign IFSPs, and participate in family services.
- If a judge has limited the biological or adoptive parent's rights to make decisions related to early intervention, proceed to *STEP 3*.

*Step 3. Has a judge designated a specific person to make education and related decisions for the child, to act as the child's "parent" or surrogate parent, or to be the child's guardian?*

Often, when a juvenile court judge limits a parent's rights, he or she also will appoint another person as the child's guardian or education decision-maker. This will be done via a court order or decree. The child's caseworker and Guardian ad litem will know if the judge has designated a guardian or education decision-maker and should be able to provide a copy of the court order.

- If a judge has designated a guardian or education decision-maker, **that person is the ITEIP parent**, with the authority to consent for evaluations and services, sign IFSPs, and participate in family services.
- If a judge has not designated a guardian or education decision-maker, proceed to *STEP 4*.

*Step 4. Is the child living with a relative or other adult who is not a foster parent, but who is acting in the place of a parent, and who is willing to fulfill the role of "parent" in the ITEIP process?*

If a child must be removed from his or her parents, the juvenile court often will try to place the child with a relative or another adult who has a history with the child. Kinship care, commonly defined as the full-time care, nurturing, and protection of children by relatives, members of their tribes or clans, or other adults who have a family relationship to a child, is increasingly common, and child welfare laws encourage judges to place children with relatives whenever appropriate.

Kinship caregivers are not always legal guardians, and in many cases a judge has not issued a court order or decree placing the child in kinship care. Caregivers can serve as ITEIP parents in the absence of a court order, as long as the child is living with the caregiver and the caregiver is acting in the place of a parent. Family Resource Coordinators should consult with caregivers, the child's caseworker, or the Guardian ad litem to ascertain the caregiver's appropriate role.



- If the child has a kinship caregiver willing to fulfill the role of “parent” in the ITEIP process, **that person is the ITEIP parent**, with the authority to consent for evaluations and services, sign IFSPs, and participate in family services.
- If the infant or toddler does not have a kinship caregiver willing to participate, proceed to *STEP 5*.

*Step 5. Does the infant or toddler have a foster parent who is willing to fulfill the role of “parent” in the ITEIP process?*

While many children in the custody of the Children’s Administration remain at home with parents or are placed in kinship care with relatives or other known adults, others reside in foster family homes. Foster parents commonly make education and other decisions for children in their care. IDEA and Washington state regulations permit foster parents to be considered “parents” for the ITEIP process.

- If the infant or toddler has a foster parent willing to fulfill the role of “parent” in the ITEIP process, **that person is the ITEIP parent**, with the authority to consent for evaluations and services, sign IFSPs, and participate in family services.
- If the infant or toddler does not have a foster parent willing to participate, proceed to *STEP 6*.

*Step 6. If Steps 1-5 have not yielded an ITEIP parent, the agency must assign a **surrogate parent** for the infant or toddler. This is likely to be a relatively uncommon situation.*

***If a surrogate parent is necessary, how should the Local Lead Agency assign one?***

IDEA requires procedures to protect the rights infants or toddlers who do not have an appropriate ITEIP “parent”, particularly when the child is a ward of the state. The procedures must include a process to assign a surrogate parent, who will have the authority to consent for evaluations and services, sign IFSPs, and participate in family services. The surrogate cannot be an employee of the State lead agency or other State agency and cannot be any person or employee of any person providing early intervention services to the infant or toddler or family.<sup>.xi</sup> As such, *caseworkers cannot serve as surrogate parents*.

The surrogate parent must have the knowledge and skills needed to represent the child adequately and must not have any interest that conflicts with those of the child.<sup>.xii</sup> Ideally, the surrogate parent should be someone who knows the child and will have an ongoing relationship with the child, such as a family member or friend. If no one else is available, the agency must



recruit a volunteer, such as an advocate from the child welfare case. A surrogate parent should be in place within 30 days of the agency determining that one is needed.<sup>xiii</sup>

***How much time should the Local Lead Agency take to identify the appropriate decision-maker or the need for a surrogate parent?***

There is no time to lose when infants and toddlers need early intervention to support their development and learning. This is particularly true when the child has also been abused or neglected. Therefore, Local Lead Agencies should make every effort to identify the appropriate decision-maker or determine a surrogate parent is needed as quickly as possible. Immediate contact with the child's caseworker or Guardian ad litem should yield the information needed to navigate quickly through the flow chart. Unreasonable delays will violate IDEA.

Child welfare cases are dynamic, and a child may be in the process of leaving or returning to the parent's home, leaving or arriving at a foster home, or having a guardian or decision-maker appointed. However, these changes often take much longer than anticipated. Therefore, once an appropriate ITEIP parent is identified, Local Lead Agencies should proceed with evaluations and services immediately. Agencies should not wait for court action, even if it appears imminent. If a judge subsequently limits parental rights, appoints a different decision-maker, or moves the child to a different foster home, the agency and service providers can continue the evaluation process or provision of services with the new ITEIP parent.

***What if the Family Resources Coordinator or other ITEIP staff or provider feels the ITEIP parent is not acting in the child's best interest?***

If the ITEIP parent is not participating in meetings or services or is making decisions that appear not to be in the child's best interest, the Family Resources Coordinator or other appropriate person can contact the child's caseworker, Guardian ad litem, or even the juvenile court judge to share their concerns.

***What is the child's caseworker's appropriate role in ITEIP?***

Caseworkers cannot consent for evaluations and services or sign IFSPs. However, as long as the ITEIP parent does not object, the caseworker can be an important source of information for early intervention agencies and providers. First, caseworkers can provide information about the child welfare case, including whether the biological/adoptive parents' rights have been limited and whether a judge has designated a guardian or education decision-maker. Second, the caseworker should be able to share some information about the child's and family's needs,



routines, challenges, and goals, while respecting their privacy. With the ITEIP parent's permission, caseworkers can attend IFSP and other meetings, advocate for the child's needs, and support the ITEIP parent in his or her decision-making role. Finally, the caseworker should assist in service coordination and ensuring the child and family can participate fully in ITEIP services.

### ***How can Local Lead Agencies improve their outreach to infants and toddlers in the custody of the Children's Administration?***

- Encourage the active involvement of local Children's Administration supervisors and caseworkers in the County Interagency Coordinating Council. Use the County ICC to jumpstart coordinated efforts, particularly related to service coordination, delivery, and payment.
- Consider inviting the chief judges of local juvenile courts to ICC meetings.
- Offer local juvenile court judges training on ITEIP eligibility and services.
- Develop a joint process with local Children's Administration offices to facilitate referrals to ITEIP.
- Organize trainings for local caseworkers and foster parents on how to recognize developmental delays in young children, how the ITEIP referral process works, the services available through ITEIP, and the importance of early intervention in the long-term health and development of the child. Caseworkers may not consider the positive effects ITEIP services can have on family preservation and reunification for abused infants and toddlers. One study found that neither caseworkers nor foster parents are able to identify most children who need early intervention services, and that trainings can increase appropriate referrals and streamline the evaluation process.<sup>xiv</sup>
- Seek training from local Children's Administration offices on the child welfare system, procedures, and how best to serve young children and families involved in the foster care system.
- Supply juvenile court judges, advocates and caseworkers with a checklist of questions about young children's developmental needs to use in court hearings. Such a checklist can help ensure that young children's development is monitored on an ongoing basis and early interventions are considered as part of service planning for each child. Also, knowing that



questions will be asked in court regarding a child's developmental status might help to elevate the importance of early intervention among the key players in the child welfare system.

- Communicate with children's Guardians ad litem, Court-Appointed Special Advocates, and other advocates in the child welfare case. They may have important information about the child and family and may be able to assist with service coordination and delivery.

### Resources for Serving Infants and Toddlers in Foster Care:

- ITEIP: Washington State Infant Toddler Early Intervention Program - <http://www.dshs.wa.gov/iteip/>
- Legal Center for Foster Care and Education - Special Education Decision-making Series <http://www.abanet.org/child/education/publications/specialeducation.html>
- NECTAC: National Early Childhood Technical Assistance Center – Serving Children in the Foster Care System <http://www.nectac.org/topics/earlyid/capta.asp>
- NECTAC: National Early Childhood Technical Assistance Center – Interagency Coordination <http://www.nectac.org/topics/intercoord/intercoord.asp>

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<sup>i</sup> WAC 392-172A-01200.

<sup>ii</sup> Helen Ward & Sun Young Yoon (2009). *Children at Risk in the Child Welfare System: Collaborations to Promote School Readiness*. Portland, ME: Catherine E. Cutler Institute for Child and Family Policy.

<sup>iii</sup> Kathleen Hebbeler, et al. (2007). *Early Intervention for Infants and Toddlers with Disabilities and Their Families: Participants, Services, and Outcomes. Final Report of the National Early Intervention Longitudinal Study (NEILS)*. Menlo Park, CA: SRI International.

<sup>iv</sup> Hebbeler (2007).

<sup>v</sup> 20 USC §1437(a)(6). The Child Abuse Prevention and Treatment Act (CAPTA) has complementary language.

<sup>vi</sup> 20 USC §1435(a)(5).

<sup>vii</sup> 20 USC §1412(a)(3).

<sup>viii</sup> 20 USC §1439(a)(5).

<sup>ix</sup> Ward & Yoon (2009).



<sup>x</sup> Legal references for the flow chart are: WAC 392-172A-01125; 34 CFR §303.19; 34 CFR §300.30.

<sup>xi</sup> 20 USC §1439(a)(5).

<sup>xii</sup> 34 CFR §303.406.

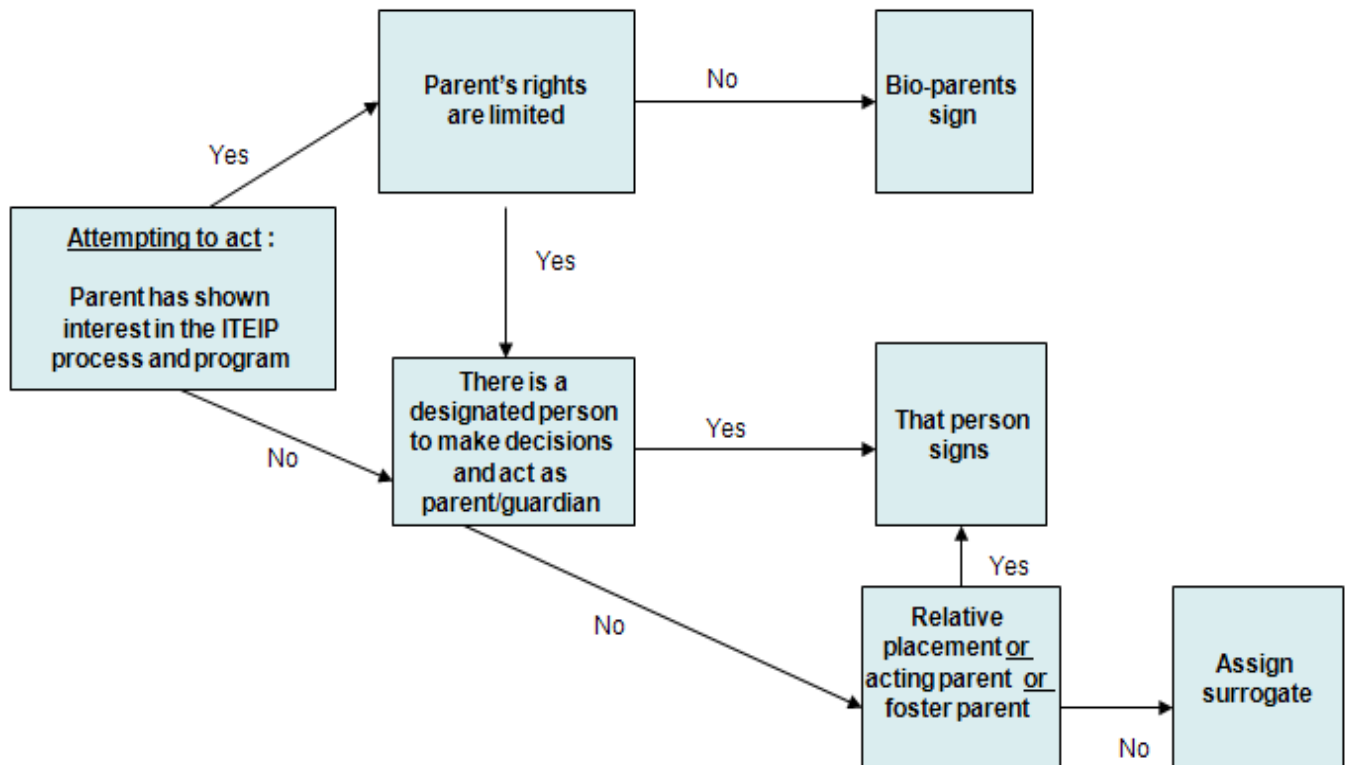
<sup>xiii</sup> 20 USC §1415(b)(2)(B).

<sup>xiv</sup> Ward & Yoon (2009).

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### Flow Chart: Identifying the "Parent" for Infants and Toddlers in Foster Care under IDEA, Part C



Note: The authority to make non-IDEA clinical, medical, and other decisions for infants and toddlers in foster care may lie with the child's case worker, the ITEIP parent, or another adult. FRCs should consult with the child's case worker to determine the appropriate decision-maker for services and care outside the context of IDEA (P. Julianelle, JD).

The Flow Chart identifying the parent for infants and toddlers in foster care under IDEA, Part C was developed by Kathy Avery, Lead FRC, Holly Ridge Center, Bremerton, Washington.